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Letter dated 14 May 2009 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council

I have the honour to transmit herewith the assessments of the President and the Prosecutor of the International Criminal Tribunal for Rwanda on the implementation of the completion strategy of the Tribunal, pursuant to Security Council resolution 1534 (2004), as at 4 May 2009 (see enclosure).

I should be grateful if you would transmit the enclosed report to the members of the Security Council.

(*Signed*) Dennis **Byron**
President

09-33783 (E) 270509

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Enclosure

[Original: English and French]

Report on the completion strategy of the International Criminal Tribunal for Rwanda

(as at 4 May 2009)

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INTRODUCTION

1. In 2003, the International Criminal Tribunal for Rwanda ("Tribunal") formalized a strategy ("Completion Strategy") to achieve the objectives of completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010, in accordance with Security Council Resolution 1503 (2003).

2. The present report, in conjunction with previous submissions to the Security Council pursuant to Resolution 1534 (2004), provides an overview of the Tribunal's progress to date in implementing the Completion Strategy, which has been continuously updated and developed since 2003.[1]

I. ACTIVITIES IN CHAMBERS

3. The Tribunal's Chambers comprise three Trial Chambers in Arusha and an Appeals Chamber located in The Hague. Each case before the Tribunal is heard at first instance by a Trial Chamber of three permanent and/or *ad litem* judges, and, if appealed, by five permanent judges of the Appeals Chamber.

A. Activities at First Instance

4. Since November 2008, four judgements concerning seven accused have been delivered.[2] Six cases concerning fourteen accused are in the judgement drafting phase,[3] with three judgements expected to be delivered in the first half of 2009.[4] The presentation of evidence has been completed in one case concerning four accused, and closing arguments are forthcoming.[5] Four trials involving six accused are currently ongoing.[6] Seven single-accused trials including one re-trial are scheduled to commence within the next months.[7] The evidence phase of all first instance trials is projected to be finalized before the end of 2009, with the exception of the trial in *Karemera et al.*

[1] See the reports submitted to United Nations on 14 July 2003 and 29 September 2003, in connection with the General Assembly Resolution 57/289 (2003) and the Tribunal's request to increase the number of *ad litem* judges sitting "at any one time". Completion Strategy Reports were submitted to the President of the Security Council on 30 April 2004, 19 November 2004, 23 May 2005, 30 November 2005, 29 May 2006, 8 December 2006, 31 May 2007, 20 November 2007, 13 May 2008 and 21 November 2008.

[2] *Bikindi*, *Bagasora et al.* (Military I), *Zigiranyirazo* and *Rukundo*: further explanation is provided in sections 5 to 8.

[3] *Nyiramasuhuko et al.* (Butare), *Bizimungu et al.*, *Nsengimana*, *Nshogoza*, *Renzaho* and *Kalimanzira*: further explanation is provided in sections 9 to 14.

[4] *Renzaho*, *Nshogoza* and *Kalimanzira*.

[5] *Ndindiliyimana et al.* (Military II): further explanation is provided in section 15.

[6] *Karemera et al.*, *Setako*, *Hategekimana* and *Munyakazi*: further explanation is provided in sections 16 to 20.

[7] *Bagaragaza*, *Gatete*, *Kanyarugika*, *Muvunyi (re-trial)*, *Ntawukulilyayo*, *Nzabonimana*, *Ngirabatware*: further explanation is provided in sections 21 to 28.

a. Judgements (Annex I (A))

5. Trial Chamber I rendered judgement in the *Bagosora et al.* ("Military I") case involving four senior officers of the Rwandan army: Colonel Théoneste Bagosora, Director of Cabinet in the Ministry of Defence; General Gratien Kabiligi, head of the military operations bureau of the army general staff; Major Aloys Ntabakuze, commander of the Para Commando Battalion; and Colonel Anatole Nsengiyumva, commander of the Operational Sector of Gisenyi. The Chamber sentenced Bagosora, Ntabakuze and Nsengiyumva to life imprisonment for genocide, crimes against humanity and war crimes. The Chamber acquitted Kabiligi of all charges against him and ordered his release. It also acquitted all three of the other Accused of conspiring to commit genocide before 7 April 1994. This trial, one of the largest and longest before the Tribunal, spanned 408 trial days. A total of 242 witnesses were heard, and more than 300 written judicial decisions were issued during the course of the proceedings. The written judgement is 606 pages in length.

6. Trial Chamber II delivered the judgement in the case of *Emmanuel Rukundo* on 27 February 2009. Rukundo, a former military chaplain, was convicted of genocide, as well as extermination and murder as crimes against humanity. Rukundo was also found guilty, by a majority of the Chamber, of causing serious mental harm to a young Tutsi woman for sexually assaulting her. In view of the gravity of the crimes committed and in consideration of Rukundo's stature in society as a priest, the Chamber sentenced the Accused to 25 years' imprisonment. Over 67 trial days, the Chamber heard 50 witnesses, including Rukundo.

7. Two sections of Trial Chamber III delivered judgements in the cases of *Bikindi* and *Zigiranyirazo*. On 2 December 2008, the Chamber convicted singer and composer Simon Bikindi for direct and public incitement to commit genocide and sentenced him to fifteen years' imprisonment. The Chamber acquitted the Accused for conspiracy to commit genocide, genocide, complicity in genocide and crimes against humanity. In the course of the trial, the Chamber heard 57 witnesses over 61 trial days.

8. On 18 December 2008, another section of Trial Chamber III issued its judgement in the case against Protais Zigiranyirazo, the brother-in-law of late Rwandan President Habyarimana. The Chamber found him guilty of having participated in a joint criminal enterprise with the common purpose of committing genocide and extermination of Tutsi, as well as aiding and abetting genocide. He was sentenced to 20 years' imprisonment. In the course of the trial, the Chamber heard 67 witnesses over 88 trial days.

b. Cases in Judgement Drafting Phase (Annex I (B))

9. Three judgements involving three accused are expected to be issued in the first half of 2009, and two single-accused judgements are scheduled for the second half of 2009.

10. Trial Chamber I is in judgement deliberations in two cases. The first is the matter of *Tharcisse Renzaho*, a colonel and former prefect of Kigali-Ville. In all, 53 witnesses testified

over 49 trial days. Judgement is expected soon. The second case is that of *Hormisdas Nsengimana*, a priest and former Rector of Christ-Roi College in Nyanza. A total of 43 witnesses testified in the course of 42 trial days. Closing arguments were heard on 12 and 13 February 2009. The judgement is expected in the third quarter of 2009. The same bench that is preparing both judgements has also been managing the pre-trial work in the cases of *Gatete* and *Munyakazi*.

11. A section of Trial Chamber II has commenced the judgement drafting in the *Bizimungu et al.* case. The trial spanned 404 trial days, during which 171 witnesses testified and over 8,000 pages of exhibits were entered into evidence. The case involves four former Ministers of the Interim Government (Casimir Bizimungu, Justin Mugenzi, Jérôme Bicamumpaka, and Prosper Mugiraneza), which was installed after the assassination of the former Rwandan President Habyarimana. Closing arguments were heard between 1 and 5 December 2008. Judgement delivery is expected in mid-2010. The Chamber has delivered decisions on eight pending motions during the reporting period. In addition, judges from this Chamber have handled pre-trial matters in three cases (*Bagaragaza*, *Hategekimana*, and *Ntawukulilyayo*), and have heard the evidence in the trial of *Léonidas Nshogoza*.

12. Another section of Trial Chamber II has completed the *Nyiramasuhuko et al.* trial, the so-called Butare case involving six co-accused, Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi and Élie Ndayambaje. The trial was formally closed on 2 December 2008, but four witnesses for the Prosecution were recalled on 23, 24 and 25 February 2009 upon requests by the Defence. Closing Briefs were filed by 17 February 2009. The Chamber heard the oral closing arguments from 20 to 30 April 2009. The trial lasted over 726 days and 59 Prosecution and 130 Defence witnesses were heard. Judgement delivery is expected in mid 2010. During the reporting period, the Chamber issued 20 written decisions. The bench has also been handling pre-trial matters in the *Ngirabatware* case, and one Judge of the bench is presiding in the *Hategekimana* trial.

13. In the case against *Callixte Kalimanzira* before Trial Chamber III, the Defence case commenced on 17 November 2008 and was conducted over two trial sessions due to the Christmas recess. The first session ended on 4 December 2008, and the second started on 26 January 2009, running until the last witness, the Accused himself, completed his testimony, on 11 February 2009. The Prosecution called 24 witnesses over 16 trial days and tendered 82 exhibits. The Defence called 42 witnesses over 21 trial days and tendered 117 exhibits. The Chamber rendered 19 interlocutory decisions and orders. Closing briefs were filed on 2 April 2009, and closing arguments were heard on 20 April 2009. The judgement is scheduled for delivery in mid-2009.

14. Another section of Trial Chamber III completed the evidence phase in the contempt trial of *Léonidas Nshogoza*. The Prosecution case was conducted over the course of eight trial days in February 2009. The Prosecution called five witnesses in support of its case against the Accused and introduced 24 exhibits into evidence. The Defence case was scheduled to start on

9 March 2009 but was delayed a week due to the failure of the Defence to file a reduced list of witnesses. Following the imposition of sanctions on Defence Counsel and its filing of the reduced list as ordered, the Defence commenced its case on 16 March 2009. Over ten trial days, the Defence called 11 witnesses, including the Accused, and introduced 82 exhibits into evidence. More than fifty decisions and orders have been issued by the Chamber on interlocutory motions. Closing arguments were heard on 29 April 2009. The Chamber anticipates delivering a judgement in this case in mid-2009.

c. Cases where Evidence is Completed and Closing Arguments Will be Heard Soon (Annex I (C))

15. The so-called Military II Case (*Ndindiliyimana et al.*) against four high-rank military officers completed the evidence phase in February 2009. The trial spanned over 392 trial days before a section of Trial Chamber II. During the reporting period, the Chamber heard the case of the fourth and final accused, Innocent Sagahutu. Over the course of 27 trial days, Sagahutu presented a total of 28 witnesses. On 4 December 2008, the proceedings were adjourned until 16 February 2009 in order to hear the evidence of 14 recalled and additional witnesses as a remedy for the Prosecution's violation of its obligation to disclose exculpatory material. When the proceedings resumed in February 2009, the Chamber heard only four witnesses over two days due to the unavailability of the remaining witnesses and the Defence request not to call the additional witnesses. On 31 March 2009, the Parties filed their final Closing Briefs. From 13 to 17 April 2009, the Chamber made a site visit to Rwanda. During the reporting period, the Chamber issued 19 written and 12 oral decisions. The Chamber is scheduled to hear the Parties' final oral arguments on 24, 25, and 26 June 2009.

d. Ongoing Trials (Annex I (D))

16. Four single-accused cases and one multi-accused cases are currently on-going before the Trial Chambers.

17. The second trial session of the Prosecution case against *Ephrem Setako*, a Lieutenant-Colonel in the Army and Director of the Judicial Affairs Division of the Ministry of Defence, resumed from 16 to 24 February 2009 before Trial Chamber I. The last Prosecution witness was heard from 20 to 22 April 2009 via video-link testimony. The Defence case opened on 4 May 2009. One oral and five written decisions were rendered during the reporting period.

18. The trial of *Yussuf Munyakazi*, an *Interahamwe* leader, commenced on 22 April 2009 before another section of Trial Chamber I. As of 4 May 2009, 9 witnesses completed their testimony. The Prosecution case is expected to resume on 1 June 2009 for an additional two weeks, following which there will be a two-month adjournment before the Defence begins its case. On 17 April 2009, the Chamber issued a decision allowing the Prosecution to remove ten witnesses from its list.

19. A section of Trial Chamber II is hearing the case of *Ildephonse Hategekimana*, involving a commander of the Ngoma Military Camp. The case opened on 26 January 2009 before Trial Chamber I. At the opening of the trial, the presiding judge recused herself because she had been a member of the bench in another case, *Prosecutor v. Muvunyi*, where there was a finding of fact concerning the Accused Hategekimana. The case was reassigned to a bench in Trial Chamber II. The Prosecution case was heard from 16 March to 4 May 2009. Over the course of twenty-one trial days, the Trial Chamber heard the evidence of 20 Prosecution witnesses and issued four written and sixteen oral decisions. The Defence case is scheduled to begin on 22 June 2009 and is projected to run over five trial weeks.

20. Trial Chamber III continued hearing evidence in the *Édouard Karemera et al.* case, involving three accused. Due to the serious illness of one of the accused, Matthieu Ngirumpatse, the proceedings were adjourned from November 2008 until 12 February 2009 for the resumption of the trial. A status conference was held on 9 February 2009 when Ngirumpatse's Counsel indicated that the Accused was withdrawing his consent, given in November 2008, to continue the trial in his absence. On 3 March 2009, the Chamber delivered a decision ordering the severance of Ngirumpatse from the case. The Accused appealed this decision, and the Appeals Chamber is presently deliberating on the issue. In the meantime, the Trial Chamber determined that the decision on severance would not have immediate affect and the trial resumed on 24 March 2009, in the absence of Ngirumpatse from the courtroom, with the Chamber hearing the remaining witnesses called by the Accused Edouard Karemera. It is anticipated that the Accused Joseph Nzirorera will commence the presentation of his defence in June 2009. Since 24 March 2009, the Chamber has heard 12 witnesses over a period of ten trial days. From 1 December 2008 until 4 May 2009, the Chamber delivered 66 decisions and orders. At present, as previously indicated, the evidence phase in this case is projected to continue through the year. The future schedule is dependent on the Appeals Chamber's decision in relation to Ngirumpatse's severance and on his state of health. Judgement delivery is anticipated end 2010.

c. Cases to Commence Within the Next Months (Annexes 2 and 3)

21. Six more new trials and one re-trial are to commence before the Tribunal in 2009. Three of the cases, which the last report indicated were to commence in the first half of 2009, *Bagaragaza* and *Nzabonimana* have been postponed for reasons set out below. The trials of *Munyakazi* and *Hategekimana* have started in their place.

22. Trial Chamber I is seized of one case, *Prosecutor v. Jean-Baptiste Gatete*, for pre-trial preparation. A status conference was held on 26 March 2009. A new defence team is currently being assigned after the resignation of the previous Counsel. The trial is expected to begin in August 2009, subject to the availability of judges and readiness of the defence.

23. In the *Ngirabatware* case, assigned to Trial Chamber II for pre-trial proceedings, the Chamber has issued ten written decisions during the reporting period, including a decision

partially granting a Prosecution motion to amend the Indictment. As a result, Ngirabatware made a further appearance before Judge Sekule on 9 February 2009, which was followed by a status conference. The trial is scheduled in May 2009. On 15 April 2009, the Chamber granted a Defence motion to certify the appeal of a decision denying the vacation of the trial date.

24. A section of Trial Chamber II is handling pre-trial matters in the case of *Gaspard Kamuragiko*. The Chamber held a status conference on 17 April 2009, and on 24 April 2009 issued a scheduling order for the trial to start on 1 June 2009.

25. Pre-trial work in the case of *Dominique Ntawukulilyayo* is being conducted by a section of Trial Chamber III. The Chamber held a status conference on 16 December 2008. Since December 2008, there have been a total of nine decisions/orders issued by the Chamber regarding pre-trial matters, including decisions granting protective measures to Prosecution witnesses, taking judicial notice of facts of common knowledge, and issuing further orders to the Parties regarding pre-trial management to assist the Chamber in narrowing the issues in the case. The Prosecution was also found to be in breach of its obligations with regard to disclosure. The Chamber has issued four decisions/orders in relation to disclosure, and due to the extent of the Prosecution's breach of its disclosure obligations, commencement of trial has been postponed from the end of March to 6 May 2009.

26. In the case of *Michel Bagaragaza*, the same Pre-trial Chamber held status conferences on 16 December 2008 and 9 March 2009, for the purposes of ascertaining trial readiness of the Parties, as well as to establish dates for the settlement of pre-trial matters. The commencement of the trial was rescheduled to after the summer break due to the unavailability of judges and because trial readiness was more advanced in other cases.

27. Another section of Trial Chamber III is handling pre-trial matters in the case of *Callixte Nzabonimana*. The Accused was transferred to Arusha in February 2008. A status conference was held on 12 February 2009, and the Defence indicated that it would not be ready to start the trial before September 2009 due to the complexity of the case. A Co-Counsel and a supplementary Investigator have been appointed for the Defence Team to provide additional support. The trial is now scheduled to run for twelve weeks from September to December 2009.

28. Trial Chamber III will also hear the re-trial of *Tharcisse Muvunyi* and is currently handling pre-trial matters. On 28 August 2008, the Appeals Chamber overturned Muvunyi's convictions by Trial Chamber II on certain counts and quashed his conviction for direct and public incitement to commit genocide based on a particular speech. The Appeals Chamber ordered a re-trial limited to the allegations considered in relation to this incident. The re-trial was initially scheduled to start in January. However, the re-trial was adjourned due to a legal dispute about its scope and the possibility of adducing new evidence. On 24 March 2009, the Appeals Chamber issued a decision allowing the introduction of new evidence. A status conference was held on 29 April 2009 and the re-trial is now scheduled to start in late June 2009, with the Judgement expected in the second half of 2009.

f. Requests for Referral

29. Since June 2007, the Prosecutor had requested the transfer to Rwanda of five cases concerning one fugitive and four Accused detained at the Tribunal. Following the denial of these requests in the cases of *Munyakazi* (28 May 2008), *Kanyarukiga* (6 June 2008) and *Hategekimana* (19 June 2008), based on fair trial concerns, two Trial Chambers denied the remaining two requests in the reporting period in the cases of *Gatete* (17 November 2008) and *Kayishema* (16 December 2008). The Appeals Chamber confirmed the denial in the case of *Hategekimana* on 4 December 2008, as before in the cases of *Munyakazi* (8 October 2008) and *Kanyarugika* (30 October 2008). It was therefore necessary for the Tribunal to schedule trials for all of the four detained Accused.

B. Activities at the Appeals Chamber

30. The Appeals Chamber delivered its judgement in the case of *François Karera* on 2 February 2009, bringing the total number of persons whose appeals have been completed to 27. The Appeals Chamber confirmed Karera's sentence of life imprisonment.

31. The Appeals Chamber is presently seized of five appeals from judgement. In the *Bikindi* and *Zigiranyirazo* cases, both parties filed notices of appeal from the Trial Judgements rendered in December 2008, and the briefings are in progress. In the *Nchamihigo* case, the appellant filed his notice of appeal on 6 March 2009, and the briefing is in progress. In the case of *Bagosora et al.*, the written Trial Judgement was filed in English on 9 February 2009. Bagosora has been directed by the Appeals Chamber to file his notice of appeal no later than 30 days from the date of the filing of the French translation of the Trial Judgement. Aloys Ntabakuze and Anatole Nsengiyumva have filed their notices of appeal. In the *Rukundo* case, the Trial Judgement was rendered on 27 February 2009, and the Appeals Chamber granted extensions of time to the parties to file notices of appeal: the Prosecution by 13 April 2009, and Rukundo within 30 days of the filing of the French translation of the Trial Judgement.

32. Since the last report in November 2008, in addition to the *Karera* judgement, the Appeals Chamber issued one decision on an appeal concerning a Rule 11*bis* referral to Rwanda, five decisions disposing of interlocutory appeals, five decisions concerning review or other requests, and 62 pre-appeal orders and decisions.

2. MEASURES IMPLEMENTING THE COMPLETION STRATEGY

The following section supplements prior reports and highlights essential elements of the Tribunal's efforts to comply with its Completion Strategy.

A. Management of Trial Work

a. Judicial Calendar

33. The Office of the President issues a Judicial Calendar every six months after consultation with the Presiding Judges in each case and whenever possible with representatives of the Prosecution and the Defence. This calendar is constantly updated and adapted to recent developments. The precise scheduling of individual cases is then done by the Trial Chambers in consultation with the parties, taking into consideration the requirements of a fair trial and the availability of resources to ensure the smooth functioning of the trial. The Judicial Calendar aims at ensuring optimal use of courtrooms and the efficient distribution of the workload amongst the different benches. At this stage, the workload at the Tribunal remains extremely heavy; this makes careful scheduling as well as monitoring of the calendar crucial.

34. Between December 2008 and May 2009, nine different sections of the Trial Chambers used the four courtrooms of the Tribunal in nine different cases. Further Trial Chamber sections used the courtrooms for pre-trial matters and referral decisions.

35. The time standards indicated in the last report for single-accused cases, which consist of a ten-week average for the presentation of both Prosecution and Defence evidence, has proven realistic for the present Judicial Calendar. Most cases are based on an eight-week projection. In some cases, the four weeks allotted to the Prosecution or the Defence need to be split into two sections to take into account courtroom availability and the involvement of most judges in several ongoing trials. Less than eight weeks are necessary for the presentation of the evidence of both parties in some cases, such as the contempt case of *Nshogoza* or the re-trial of *Muvunyi*. To the contrary, in the *Nzabonimana* case, the estimated length was rescheduled to twelve weeks after discussions with the parties regarding the complexity of the trial.

36. The Judicial Calendar also aims at maintaining time standards of approximately six to eight weeks for the break between the presentation of the Prosecution and the Defence cases. The break may be shortened or lengthened depending on the availability of court rooms and parallel commitments of the judges, and taking into account fair trial considerations. After closure of the Defence case, another break is required to allow the parties to prepare and file their closing briefs. This break is projected to average two months. Thereafter, closing arguments should not be heard later than three weeks after filing of the closing briefs in the single-accused cases, subject to any imperatives caused by translation needs.

37. The projection in the last report of an average time for drafting a judgement in a single-accused case of four months from the time of the closing arguments had to be modified. The projection was based on the availability of a complete team of fully dedicated legal staff. However, due to late arrival of additional staff which have been recruited for Chambers, the currently available staff often have had to take on pre-trial work for the new cases in which their bench has been involved. This situation inevitably delays the judgement drafting process in ongoing cases. Another factor to consider is that new staff members need approximately

three months until they work at full capacity. New projections based on the currently available staffing have therefore been revised to provide for an average judgement delivery time of eight months.

38. The three multi-accused cases in judgement drafting phase pose particular challenges due to their complexity and scale. Again, the parallel involvement of judges and legal staff in other cases, both in pre-trial and trial phase, and the late arrival of new staff to work exclusively on the judgement drafting have further delayed the process of judgement drafting. Judgement delivery is expected in mid-2010 for all three multi-accused trials in the judgement drafting phase.

b. Management of Proceedings

39. The Trial Chambers continue to work on improving the management of trials on all levels, from the pre-trial to the actual trial phase to judgement drafting. Two external consultants continued to assist in these efforts in from January to April 2009. A retreat was held in March 2009, where all judges as well as Chambers' legal and support staff discussed best practices in the various phases of a trial with representatives of the Office of the Prosecutor ("OTP"), Defence, different sections of the Registry and external experts.

40. The Trial Chambers have put particular emphasis on efficient pre-trial work in the new cases commencing in 2009. Informal meetings with the parties and comprehensive status conferences aim at ensuring that the case to be argued is refined and that disputes amongst the parties are addressed to the maximum extent possible before the start of the trial. In order to ensure fair and expeditious trials, judicial orders are given for early disclosure, which are being continuously monitored. The increased use of case management software will facilitate the management of trials and the preparation of the judgement drafting.

B. Judges and Staff Management

a. Judges

41. At the end of 2008, two permanent judges, Judge Reddy of Fiji and Judge Weinberg of Argentina, as well as *ad litem* Judge Fremr of the Czech Republic, resigned. Currently nine permanent judges serve at the Tribunal, including two assigned to the Appeals Chamber. In addition, eleven *ad litem* judges serve in Arusha. All but one judge are assigned to at least two cases, and many of the judges sit on the bench of three cases at one time.

42. On 24 December 2008, the Security Council adopted Resolution 1855, which allowed for an increase in the number of *ad litem* judges serving at the Tribunal at any one time up to twelve. The Resolution also allows trial benches to be composed exclusively of *ad litem* judges and an *ad litem* judge to preside over a case. This composition is currently being used for the first time in the *Munyakazi* trial with Judge Arrey presiding. Following the resignation of one

ad litem judge at the end of 2008 and the adoption of the Resolution, three new *ad litem* judges, Judge Joseph Masanche of Tanzania, Judge Mparany Rajohnson of Madagascar and Judge Aydin Akay of Turkey, joined the Tribunal in the first months of 2009.

43. The differences in the status between permanent and *ad litem* judges remain a source of concern: following Resolution 1855 (2008), their competencies are now almost identical to that of permanent judges. Seven out of the eleven *ad litem* judges currently serving at the Tribunal have been in service for longer than five years. Despite this, their status differs from the status of permanent judges with regard to pension rights and entitlement to an education allowance and a relocation grant. The President and the Registrar of the Tribunal will continue their efforts to find a solution to this pressing problem.

44. The denial of all requests for referral to Rwanda has resulted in the trials of the maximum number of possible accused foreseen in the last report. The current number of judges, not all of whom are available to assume new cases, has turned out to be insufficient to form benches for all ten new cases. Therefore, a request is being prepared for a Security Council Resolution allowing for a higher number of *ad litem* judges and for a mechanism to add additional judges to the current roster which has been depleted.

45. The President is in the process of submitting a request to the Security Council to extend the mandate of all judges willing to continue their service until the end of 2010 or the completion of the cases to which they are assigned, if earlier.

b. Staff Management

46. The difficulty in retaining competent, knowledgeable and experienced staff remains a major source of concern for the Tribunal. The Tribunal can no longer offer long-term job security to its staff. At the same time, the continued service of the same staff in areas with consistently heavy workload is essential to ensure the timely completion of the trials and to ensure a smooth transition to the future Residual Mechanism.

47. The supplementary budget approved by the General Assembly in December 2008 allowed for the reinstatement of 339 posts until the end of September 2009. The Tribunal is currently in the process of preparing its budgetary submission for the 2010-2011 biennium. In particular, the Chambers and the Chamber Support Services with their consistently heavy workload will need to be provided with adequate resources to avoid further delays in the finalization of trials and the delivery of judgements.

c. Expansion of the Appeals Chamber

48. The proliferation of Trial Chamber judgements that will be delivered in 2009 and 2010 will require increased appellate capacity to complete the workload within a reasonable period.

C. Work of the Office of the Prosecutor — Referrals

49. The referral of cases from the Tribunal to national jurisdictions for trial remains a key pillar of the Completion Strategy. The OTP is considering additional measures to ensure timely completion and to further reduce the possibilities for the emergence of an impunity gap.

50. In this regard, the OTP continues to finalize preparation of the cases of fugitives with a view to applying for their referral to national jurisdictions. As mentioned earlier, the five requests for referral of cases to Rwanda have been denied by the Trial Chambers. All three Trial Chamber decisions which were appealed have been confirmed by the Appeals Chamber. The Government of Rwanda is in the process of further amending its laws in order to remove any remaining legal hurdles for the transfer of cases from the Tribunal to be heard in Rwanda. When such new legislation is in place, the Prosecutor intends to reapply for referral of cases to Rwanda.

51. The OTP also intends to propose an amendment to the Tribunal's Rules of Procedure and Evidence to include the option of special proceedings for the preservation of evidence against all fugitives for use during their trials when they are eventually arrested and tried. These proceedings aim at preserving evidence to be used in the prosecution of fugitives before the Tribunal after they are apprehended. The proposed amendment is not intended to constitute a trial *in absentia*. Rather it intends to provide for adequate fair trial guarantees for the accused including the appointment of Counsel by the Trial Chamber, during such proceedings.

52. Another measure to minimize an impunity gap relates to the OTP's work in follow up to the roundtable discussion with international and national Prosecutors in November 2008 and to the emerging consensus within INTERPOL, the International Association of Prosecutors and key regional national Prosecutors to enhance cooperation in the tracking, arrest and prosecution of Tribunal indictees as well as other suspects of the Rwandan genocide of 1994.

53. OTP investigations continue to focus on trial and appeal support, preparation of cases of fugitives and other indictees in custody for referral. OTP investigators also provide support to foreign requests for prosecution of cases before national jurisdictions of persons who have not been indicted by the Tribunal but against whom the OTP often holds substantial evidentiary information in its database.

54. For the pre-trial phase of each case, OTP ensures the trial-readiness of all evidence, including the witnesses. Furthermore, additional investigations may be required during a trial to provide for additional and corroborating evidence and to address the Defence case, including necessary rebuttal evidence.

55. The OTP Tracking Team continues to intensify its efforts to locate the 13 remaining fugitives. The security situation in the Democratic Republic of Congo has made this task more difficult. The Prosecutor continues to pursue with the government of Kenya the matter of the

seizure of the assets of Félicien Kabuga,[8] as well as his arrest and transfer to the Tribunal for trial. Kabuga and three other high-level fugitive indictees[9] are earmarked for trial at the Tribunal because of their leadership roles during the 1994 genocide. Their possible arrest and transfer to the Tribunal would require a reassessment of the Tribunal's judicial calendar. The Prosecutor intends to request the referral of the other nine fugitive cases to national jurisdictions for trial. The Security Council will be promptly informed of any new development in this matter.

56. In addition to new trials, the work of the OTP focuses on the increasing workload of its Appeals and Legal Advisory Division that will take up the applications and appeals from the several judgements expected to be delivered in 2009 and 2010.

D. Cooperation between States and the Tribunal

57. The Tribunal depends on the continued assistance of Member States to accomplish its mandate. Cooperation is required in particular for arrests of fugitives, possible transfer of cases, enforcement of sentences and relocation of acquitted persons and persons who have served their sentence.

58. The arrest of the 13 remaining fugitives remains a core element of the Tribunal's mandate. The Prosecutor continues to undertake diplomatic missions to secure the political support and cooperation of States for the fugitives' arrest and transfer to the Tribunal.

59. At present, the Tribunal has signed agreements with seven States on the enforcement of sentences. Since the transfer of eight convicted persons in November 2008 to Mali, transfer decisions for eight other detainees are under preparation.

60. Efforts continue to be made by the Office of the Registrar to find host countries for relocation of the two acquitted persons who remain currently under the protection of the Tribunal in Arusha.

E. Outreach and Capacity-Building

61. The Tribunal has continued to improve awareness of its work and achievements through its outreach programme. In cooperation with the Government of Rwanda and the financial support of the European Commission, the Tribunal has established ten information and documentation centres across Rwanda to improve public access to documents and other information about its work, challenges and accomplishments. Most of the new centres are housed in justice complexes to facilitate access for Rwanda judicial and legal staff to the jurisprudence of the Tribunal and to technology which will enable them to perform legal

[8] Businessman and Financier of RTLM and the *Interahamwe* militia.

[9] Augustin Bizimana, former Minister of Defence; Major Protais Mpiranya, former Commander of the Presidential Guard; Captain Ildephonse Nizeyimana, former head of military intelligence and operations at ESO.

research on-line. The centres will work closely with local authorities and communities. They will help to coordinate genocide prevention education and research, and to provide a complete and coherent picture of justice that is being pursued at all levels. The first three ICTR Provincial Documentation and Information Centres, in Nyamagabe, Muhanga and Gasabo Districts were inaugurated during the reporting period.

62. Given that radio is the most widely-available medium in Rwanda, the Tribunal's Outreach Programme facilitates the work of Rwandan journalists who broadcast about court proceedings on a daily basis from Arusha. In the past, the Outreach Programme provided financial support to allow journalists from the *Office Rwandais de l'information* (ORINFOR) and the Ministry of Justice to report from Arusha. The ICTR, in collaboration with the two institutions, fills the information gap about the Tribunal that exists in the rural areas of Rwanda. Journalists are provided with audio or videocassettes of the Tribunal's hearings that they can broadcast via government and private broadcasting stations in Rwanda and elsewhere. Additionally, the Tribunal provides a satellite feed of its judgment delivery that can be broadcast live. The Outreach Programme has also produced documentaries in Kinyarwanda about some of the cases that have already been completed. Tribunal staff screen the documentaries in Rwandan communes and schools on a regular basis as part of its awareness-raising campaign.

63. The Tribunal has also continued its training work for Rwandan judges, prosecutors, defense counsel and court staff, including training sessions in international criminal law, adversarial criminal procedures and court administration and information management.

64. The ICTR Library has contributed to strengthening the judicial and academic sectors in Rwanda through training sessions in online legal research methods and library/information management. More than 450 participants have been trained, including judges, Bar Association and prosecution lawyers, law students and library students. Although the demand for training is still high, funding for 2009 has not been obtained to continue this important project, and Member States are strongly encouraged to consider contributions.

65. The Tribunal's Voluntary Trust Fund for capacity-building activities has supported the activities listed above. Due to lack of funding, the activities had to be scaled down in 2008, although the demand remains high. Thanks to the release of resources by the European Union, additional activities will be carried out in the course of 2009 targeting especially judges and members of the Bar Association. The Tribunal is grateful for the contributions received and welcomes further contributions to be able to complete ongoing projects and support further essential tasks.

F. Legacy and Residual Issues

66. The discussions within the Security Council on the establishment of an international mechanism to address all residual issues emerging out of the Tribunal's closure are essential to

assure victims and the international community that the fugitives will not be allowed to take advantage of an impunity gap due to the completion of the Tribunal's mandate.

67. Since 2000, the Library has been compiling the "ICTR Basic Documents and Case Law" on five CD-ROMs and two DVDs. The second edition of the DVD has been recently launched. It contains all ICTR public documents for the period 1995-2008. The DVD is freely distributed, amongst others, to the Rwandan judiciary, NGOs, international courts and universities all over the world. The continuation of the project will contribute to increasing public knowledge of the Tribunal's legacy; however, the lifespan of the project is dependant on the availability of financial resources and staff.

68. Ensuring a smooth transition between the Tribunal in the last period of its lifespan and the Residual Mechanism that will follow requires meticulous preparation. During the reporting period, the working pace concerning preparation of the post-closure period has increased significantly. The Tribunal, in particular through its Legacy Committee which includes a representative of each of the three organs, has been very actively involved in the work of the Informal Working Group on the Tribunals of the Security Council. Comments have been submitted on various discussion papers and the draft report of the UN Secretariat to the Secretary-General on the Administrative and Budgetary Aspects of the Options for Possible Locations for the Tribunals' Archives and the Seat of the Residual Mechanism.

CONCLUSION AND UPDATED PROGNOSIS REGARDING THE IMPLEMENTATION OF THE COMPLETION STRATEGY

69. This report reveals that the Tribunal is facing an unprecedented workload in 2009. It appears that the maximum possible number of ten new cases for 2009 anticipated in the last report has become a reality. An essential element of the Completion Strategy cannot be pursued further at this time because all requests for referrals to Rwanda have been denied. This affects the time frame of the Completion Strategy and the resources required to complete the work.

70. As mentioned above, four judgements involving seven accused have been delivered (*Bikindi*, *Bagosora et al.*, *Zigiranyirazo* and *Rukundo*) in the reporting period, and three judgements in single-accused cases are expected within the coming months (*Renzaho*, *Kalimanzira* and *Nshogoza*). All multi-accused trials, with the exception of *Karemera et al.*, are in the judgement drafting phase. Closing arguments in the *Military II* case remain to be heard in June 2009. Judgement delivery is expected in mid-2010 for each of these three multi-accused trials, *Bizimungu et al.*, *Butare* and *Military II*.

71. With the benefit of a judicially verified factual record from the last few years, the Indictments in all new single-accused cases have been reduced compared to cases in previous years. Therefore, no Prosecution case exceeds six weeks and most can be limited to four weeks or less. Focused pre-trial management aims at narrowing the issues to be argued by the parties.

It also helps to detect possible problems at an early stage of the proceedings, such as problems relating to disclosure, witnesses or translation of documents.

72. . The delayed start of several new cases in the first months of the year puts particular strain on judges, and legal and support staff in the middle of 2009. The reasons for the delay included the death of a lead counsel and the resignation of another lead counsel shortly before the commencement of trial; the recusal of a presiding judge at the beginning of a trial; disclosure problems causing fair trial concerns, requests of the defence to allow for longer pre-trial preparation, and legal controversy about the scope of re-trial.

73. Additional staff is currently being recruited in Chambers to work on the multiple new cases and to support judgement drafting in the multi-accused cases where the evidence phase has been completed. The Tribunal remains strongly committed to the goal of completing first instance trials within its now extended mandate, i.e. the end of 2009. However, completion projections are largely based on retention of current staff, as well as the provision of additional staff required to finalize all pending tasks. In the *Karemera et al.* case, a spill-over of the evidence phase into 2010 is likely. The length of proceedings in this case will depend on the outcome of the Appeals Chamber decision on the severance of Matthieu Ngirumpatse from the case and the state of his health.

74. Apart from *Karemera et al.*, trial activities in 2010 should be limited to contingency planning for possible delays of the trials scheduled for the last months of 2009, for reactions to orders from the Appeals Chambers and possible hearings for the purpose of evidence preservation.[10] For the rest, the Trial Chambers will focus in 2010 on the judgement drafting in all remaining cases.

75. Preparing for closure in conjunction with handling an extremely heavy workload which includes the start of numerous cases in 2009 poses particular challenges for the Tribunal. The dual challenge has implications for many aspects of the Tribunal's work, including the morale of the staff and the difficulty of maintaining adequate resources. As in the fifteen previous years of its existence, the Tribunal counts on the support of the Member States to face those challenges successfully.

[10] See para. 51.

ANNEX I (A)

STATUS OF TRIAL JUDGEMENTS DELIVERED, AS OF 4 MAY 2009: 44 ACCUSED IN 35 JUDGEMENTS

Case No.	Name	Former Title	Initial appearance	TC	Judgement
1	J. P. Akayesu	*Bourgmestre* of Taba	30 May 1996	TC1	2 September 1998
2	J. Kambanda	Prime Minister	1 May 1998	TC1	4 September 1998 (guilty plea)
3	O. Serushago	Businessman, *Interahamwe* leader	14 December 1998	TC1	5 February 1999 (guilty plea)
4	C. Kayishema	Prefect of Kibuye	31 May 1996	TC2	21 May 1999 (joinder)
	O. Ruzindana	Businessman	29 October 1996		
5	G. Rutaganda	Businessman, 2nd Vice-president of *Interahamwe*	30 May 1996	TC1	6 December 1999
6	A. Musema	Businessman	18 November 1997	TC1	27 January 2000
7	G. Ruggiu	RTLM Journalist	24 October 1997	TC1	1 June 2000 (guilty plea)
8	I. Bagilishema	*Bourgmestre* of Mabanza	1 April 1999	TC1	7 June 2001
9	G. Ntakirutimana	Doctor	2 December 1996	TC1	21 February 2003 (joinder)
	E. Ntakirutimana	Pastor	31 March 2000		
10	L. Semanza	*Bourgmestre* of Bicumbi	16 February 1998	TC3	15 May 2003
11	E. Niyitegeka	Minister of Information	15 April 1999	TC1	15 May 2003
12	J. Kajelijeli	*Bourgmestre* of Mukingo	19 April 1999	TC2	1 December 2003
13	F. Nahimana	RTLM Director	19 February 1997	TC1	"*Media* Case" (joinder) 3 December 2003
	H. Ngeze	Kangura Editor	19 November 1997		
	J.-B. Barayagwiza	Director, Ministry of Foreign Affairs	23 February 1998		
14	J. Kamuhanda	Minister of Culture and Education	24 March 2000	TC2	22 January 2004
15	A. Ntagerura	Minister of Transport	20 February 1997	TC3	"*Cyangugu* Case" (joinder) 25 February 2004
	E. Bagambiki	Prefect of Cyangugu	19 April 1999		
	S. Imanishimwe	Lieutenant in FAR	27 November 1997		
16	S. Gacumbitsi	*Bourgmestre* of Rusumo	20 June 2001	TC3	17 June 2004
17	E. Ndindabahizi	Minister of Finance	19 October 2001	TC1	15 July 2004.
18	V. Rutaganira	Councillor of Mubuga	26 March 2002	TC3	14 March 2005 (guilty plea)
19	M. Muhimana	Councillor of Gishyita	24 November 1999	TC3	28 April 2005

20	A. Simba	Lieutenant-Colonel in FAR	18 March 2002	TC1	13 December 2005
21	P. Bisengimana	*Bourgmestre* of Gikoro	18 March 2002	TC2	13 April 2006 (guilty plea)
22	J. Serugendo	Technical Director, RTLM	30 September 2005	TC1	12 June 2006 (guilty plea)
23	J. Mpambara	*Bourgmestre* of Rukara	8 August 2001	TC1	12 September 2006
24	T. Muvunyi	Commander, Ecole Sous-officiers	8 November 2000	TC2	12 September 2006
25	A. Rwamakuba	Minister of Education	7 April 1999	TC3	20 September 2006
26	A. Seromba	Priest, Kivumu Commune	8 February 2002	TC3	13 December 2006
27	J. Nzabirinda	Youth organizer	27 March 2002	TC2	23 February 2007 (guilty plea)
28	J. Rugambarara	*Bourgmestre* of Bicumbi	15 August 2003	TC2	16 November 2007 (guilty plea)
29	GAA	Witness before ICTR proceedings	10 August 2007	TC3	4 December 2007 (contempt of Tribunal)
30	F. Karera	Prefect of Kigali	26 October 2001	TC1	7 December 2007
31	S. Nchamihigo	Deputy Prosecutor of Cyangugu	29 June 2001	TC3	24 September 2008
32	S. Bikindi	Musician	4 April 2002	TC3	2 December 2008
33	P. Zigiranyirazo	Businessman	10 October 2001	TC3	18 December 2008
34	T. Bagosora	Dir. of Cabinet, Ministry of Defence	20 February 1997	TC1	"*Military I* Case" (joinder) 18 December 2008
	G. Kabiligi	Brigadier-General in FAR	17 February 1998		
	A. Ntabakuze	FAR Battalion Commander	24 October 1997		
	A. Nsengiyumva	Lieutenant-Colonel in FAR	19 February 1997		
35	E. Rukundo	Chaplain	26 September 2001	TC2	27 February 2009

ANNEX 1 (B)

CASES WHERE JUDGEMENT DELIVERY IS AWAITED: 14 ACCUSED IN 5 CASES

Case No.	Name	Former Title	Initial appearance	TC	Comments
36	T. Renzaho	Prefect of Kigali	21 November 2002	TC1	Started on 8 January 2007. Evidence completed in September 2007. Closing arguments in February 2008. Judgement expected soon.

37	C. Kalimanzira	*Directeur de Cabinet* of the Ministry of the Interior	14 November 2005	TC3	Started 30 April 2008. Evidence completed in February 2009. Closing arguments in April 2009. Judgement expected in June 2009.
38	L. Nshogoza	Former Defence Investigator (Contempt of Court Case)	11 February 2008	TC2	Started 2 February 2009. Evidence completed in March 2009. Closing arguments in April 2009. Judgement expected in June 2009.
39	H. Nsengimana	Rector, Christ-Roi College	16 April 2002	TC1	Started on 22 June 2007. Evidence completed in September 2008. Closing arguments in February 2009. Judgement expected in third quarter of 2009.
40	C. Bizimungu	Minister of Health	3 September 1999	TC2	"*Bizimungu et al.* case" (joinder). Started on 5 November 2003. Evidence completed in June 2008. Closing arguments in December 2008 Judgement expected mid-2010.
	J. Mugenzi	Minister of Commerce	17 August 1999		
	J. Bicamumpaka	Minister of Foreign Affairs	17 August 1999		
	P. Mugiraneza	Minister of Civil Service	17 August 1999		
41	P. Nyiramasuhuko	Minister of Family and Women's Affairs	3 September 1997	TC2	"*Butare* case" (joinder). Started on 12 June 2001. Evidence completed in February 2009. Closing arguments in April 2009. Judgement expected in mid-2010.
	A. S. Ntahobali	Interahamwe leader	17 October 1997		
	S. Nsabimana	Prefect of Butare	24 October 1997		
	A. Nteziryayo	Prefect of Butare	17 August 1998		
	J. Kanyabashi	Bourgmestre of Ngoma	29 November 1996		
	E. Ndayambaje	Bourgmestre of Muganza	29 November 1996		

ANNEX I (C)

CASES WHERE TRIAL IS CLOSED BUT CLOSING ARGUMENTS ARE YET TO BE HEARD: 4 ACCUSED IN 1 CASE

Case No.	Name	Former Title	Initial Appearance	TC	Comments
42	A. Ndindilyimana	Chief of Staff of Gendarmerie	27 April 2000	TC2	"*Military II* case" (joinder). Started on 20 September 2004. Completion in February 2009. Closing Arguments in June 2009. Judgement expected in mid-2010.
	F-X Nzuwonemeye	FAR Battalion Commander	25 May 2000		
	I. Sagahutu	2IC of Reconn. Battalion	28 November 2000		
	A. Bizimungu	Chief of Staff of FAR	21 August 2002		

ANNEX I (D)

ON-GOING TRIALS: 6 ACCUSED IN 4 CASES

	Name	Former Title	Initial Appearance	TC	Comments
43	E. Karemera	Minister of Interior, V-P of MRND	7 April 1999	TC3	"*Karemera et al.* case" (joinder). Started on 27 November 2003. Started *de novo* on 19 September 2005. Judgement expected in 2010. Severance of Matthieu Ngirumpatse ordered by the Trial Chamber. Decision of the Appeals Chamber pending.
	M. Ngirumpatse	D-G of Ministry of Foreign Affairs, President of MRND	7 April 1999		
	J. Nzirorera	President of National Assembly, S-G of MRND	7 April 1999		
44	E. Setako	Colonel	22 November 2004	TC1	Started 25 August 2008. Completion expected in June 2009. Judgement expected end 2009.
45	I. Hategekimana	Lieutenant, Commander of Ngoma Camp, Butare	28 February 2003	TC2	Started 16 March 2009. Completion expected in July 2009. Judgement expected mid 2010.
46	Y. Munyakazi	*Interahamwe* leader	12 May 2004	TC1	Started 20 April 2009. Completion expected in September 2009. Judgement expected mid 2010.

ANNEX 2

AWAITING TRIAL : 6 ACCUSED WHOSE CASES WILL COMMENCE SHORTLY

Name	Former Title	Initial Appearance	TC	Likely Start Date
D. Ntawukulilyayo	*Sous-Prefet* of Butare *Préfecture*	10 June 2008	TC3	4 May 2009
A. Ngirabatware	Minister in the Interim Government	10 October 2008. Further initial appearance on 9 February 2009.	TC2	May 2009
G. Kanyarukiga	Businessman	22 July 2004	TC2	1 June 2009
M. Bagaragaza	Director General of Tea Factory	16 August 2005	Tbd	August 2009
J.-B. Gatete	Bourgmestre of Murambi	20 September 2002	Tbd	August 2009
C. Nzabonimana	Minister of Youth in the Interim Government	20 February 2008	Tbd	September 2009

ANNEX 3

RE-TRIAL

Name	Former Title	Appeals Judgement	TC	Likely Start Date
T. Muvunyi	Interim Commander, ESO Camp	28 August 2008	3	June 2009

ANNEX 4

13 FUGITIVES

Augustin Bizimana	Ildephonse Nizeyimana
Félicien Kabuga	Ladislas Ntaganzwa
Fulgence Kayishema	Charles Ryandikayo
Protais Mpiranya	Charles Sikubwabo
Bernard Munyagishari	Jean-Bosco Uwinkindi
Grégoire Ndahimana	Phénéas Munyarugarama
Aloys Ndimbati	